

Title: Amendment to Merchant Shipping (Survey and Certification) Regulations 2014 IA No: DfT00281 Lead department or agency: Maritime and Coastguard Agency Other departments or agencies: Department for Transport	Impact Assessment (IA)			
	Date: 05/03/2014			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
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Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NQ	NQ	NQ	Out	N/A

What is the problem under consideration? Why is government intervention necessary?

Statutory surveys are pivotal to maritime safety, helping to prevent loss of life and pollution incidents at sea. Some of these incidents, for example, the sinking of the tankers ERIKA off the coast of France in 1999 and PRESTIGE off Spain in 2002, have catastrophic implications for the natural environment and the livelihoods of coastal populations. Without legislation the market would not account for these externalities and underprovide surveying services. The existing legislation on these survey is currently inflexible and restrictive as it does not allow full delegation of survey and certification work to competent private sector organisations. Government intervention is needed to secure the necessary de-regulatory revisions to the 1995 Regulations.

What are the policy objectives and the intended effects?

The main legislative and policy objective in this IA is to provide the SoS with the maximum flexibility in the existing legislation to give the MCA the legislative instrument to enable full delegation in the future if current policy changes and also to regularise the existing arrangements, which are based on Ministerial approval and currently rely on exemption powers in the 1995 Regulations. There are no intended effects because the scope of this IA is to only amend legislation to allow for delegation in the future not to delegate any work. If policy was introduced at some stage in the future to change current MCA practice to further delegation this would be subject to a new consultation with stakeholders and industry and a new impact assessment (IA). The MCA is trying to be pro-active in changing the legislation in advance.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

One option has been considered against a do nothing scenario that would provide the necessary legislative change to enable delegation. Actual delegation is not current MCA policy and not in scope of this impact assessment and is therefore not under consideration here. **Option 1** - Amendment to existing legislation to allow Full Delegation. This would provide the legislative vehicle for both less reliance on exemption powers from the existing regulations as well as providing the necessary flexibility in legislation to deregulate in the future. Any policy decisions on full delegation in the future would be subject to consultation with all stakeholders and further analysis with a published IA.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** March 2019

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible
SELECT SIGNATORY: _____ : _____
Date

Summary: Analysis & Evidence

Policy Option 1

Description: Amendment to existing legislation to allow Full delegation of The Merchant Shipping (Survey and Certification) Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised costs by 'main affected groups'					
No costs are associated with this measure as it only changes legislation. It does not allowing for further delegation of survey and certification work, it doesn't change MCA practice.					
Other key non-monetised costs by 'main affected groups'					
There are no non-monetised costs.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition)	Total Benefit (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised benefits by 'main affected groups'					
There are no monetised benefits associated with this measure as it only changes legislation. It does not allow for further delegation of survey and certification work, it doesn't change MCA practice.					
Other key non-monetised benefits by 'main affected groups'					
There are no non-monetised benefits.					
Key assumptions/sensitivities/risks			Discount rate (%)	3.5%	
There are no risk and assumptions as there is no impact from the measure.					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

Evidence Base (for summary sheets)

1. Background and introduction

Merchant passenger ships and cargo ships¹ are statutorily required to undergo a range of checks, known as surveys, within prescribed timescales. These surveys verify that a ship meets the required standards of international conventions² and any relevant national laws, to operate safely and without damaging the environment. Areas covered by these surveys can include but are not limited to; hull structure, watertight integrity, machinery and fire, lifesaving and radio equipment. At the end of a satisfactory survey a certificate, relevant to the area of survey undertaken, is issued to the ship which it needs to continue trading. It is the responsibility of the National Administration of the Flag State which the ship is entitled to fly to issue these certificates. For the UK this is the Maritime and Coastguard Agency (MCA).

2. Problem under consideration

The current 1995 Regulations, The Merchant Shipping (Survey and Certification) Regulations 1995, as amended, (Statutory Instrument (SI) 1995/1210, "The 1995 Regulations") derive their powers from section 85 of the Merchant Shipping Act 1995.

The 1995 Regulations make it possible for the Secretary of State (SoS) to delegate to Recognised Organisations (ROs, see section 4) certain survey and certification work relating to the construction, safety equipment and radio equipment of passenger and cargo ships. The 1995 Regulations also apply certain limitations on delegation of the work according to the type of survey, type of ship and, on occasions, the location of the ship. Some of these limitations have been removed on the basis of the SoS's exemption powers in the 1995 regulations. An amendment to these regulations would provide for less reliance on the exemption powers currently used.

Moreover, the existing legislation does not allow the flexibility for further delegation of survey and certification work to competent private sector organisations; ROs and Certifying Authorities (CAs see section 5) if in the future MCA policy on delegation would change. Therefore government intervention is necessary to change the 1995 regulations to allow for less reliance on current exemption powers and provide the legislative vehicle that would enable the possibility delegation in the future. This IA does not consider in its scope the actual delegation of services as this would be subject to another consultation and IA. The MCA considers this to be best practise as delegation would involve changing current Policy. Industry would be kept up to date and aware of the change of policy through the consultation process.

The MCA is trying to be pro-active in changing the legislation in advance. Following the publication of the Survey and Inspection review, changes to policy in one way or another, are almost inevitable. The MCA would like to be in a position where it would be able to have the legislation in place prior to a possible policy change. This would enable the MCA to be as flexible as possible in our approach with industry who are expecting us to respond to any changes as swiftly as possible.

3. Rationale for intervention

¹ A passenger ship is a merchant ship carrying more than 12 passengers and a cargo ship is a merchant ship which is not a passenger ship and includes general cargo ships, container ships, tankers and bulk carriers.

² International standards such as the International Conventions for the Safety of Life at Sea (SOLAS), the Prevention of Pollution from Ships (MARPOL) and Load Line.

Statutory surveys are pivotal to maritime safety, helping to prevent loss of life and pollution incidents at sea. Some of these incidents, for example, the sinking of the tankers ERIKA off the coast of France in 1999 and PRESTIGE off Spain in 2002, have catastrophic implications for the natural environment and the livelihoods of coastal populations.

The existing legislation is inflexible as it does not allow further delegation of survey and certification work to competent private sector organisations, ROs and CAs. Government intervention is needed to secure the necessary de-regulatory revisions to the 1995 Regulations. This would give the MCA an instrument to change policy in the future (subject to another IA and consultation process) and would provide a wider scope for further delegation of survey and certification work to the ROs and CAs, to the extent of the SoS approval. It will also regularise the existing arrangements, which are based on Ministerial approval and currently rely on exemption powers in the 1995 Regulations. This IA does not consider in its scope the actual delegation of services as this would be subject to another consultation and IA.

The MCA is trying to be pro-active in changing the legislation in advance. The MCA would like to be in a position where it would be able to have the legislation in place prior to a possible policy change. This would enable the MCA to be as flexible as possible in our approach with industry who are expecting us to respond to any changes as swiftly as possible.

4. Delegation to Recognised Organisations (ROs)

In line with most other marine administrations, much of the statutory survey and certification work is delegated, by general agreements, to private organisations known as “Recognised Organisations”³ (ROs) acting on behalf of the Secretary of State for Transport (SoS). In the UK this is partly due to the MCA not having the facilities to provide a world-wide network of offices like those offered by ROs (MCA surveyors all work from the UK) and partly because some of the statutory surveys requirements overlap with the ROs own rules and standards. This is a mutually beneficial arrangement because much of the survey work is carried out abroad depending on where a ship is stopping in port and hence travel costs are kept to a minimum. It also avoids duplication of survey effort and provides shipowners with a wider choice of organisations which can carry out the work.

Even where the MCA has not delegated a specific type of statutory survey and certification it is common practice to appoint individual RO surveyors, on a case by case basis and under its direct control, to conduct a survey abroad on the MCA’s behalf. In these cases an Instrument of Appointment (IOA) is issued under Section 256(2) of the Merchant Shipping Act 1995, to undertake each specific ship survey and around 200 are issued each year by the MCA. The level of delegation is a balance between providing a cost effective survey regime for ship-owners comparable with that offered by other flag States and the need for direct scrutiny of standards by government surveyors (MCA). This satisfies the SoS that the UK is meeting its obligations as a flag State to maintain standards of safety, pollution prevention and crew welfare on its ships. Recent decades have seen a trend of delegating more of the hardware items to the ROs, such as the ship’s hull and machinery and its life-saving, fire-fighting and pollution prevention equipment, while retaining an oversight of the management of ships.

5. Certifying Authorities (CAs)

³ Most ROs are Classification Societies such as Lloyds Register and Bureau Veritas which “class” ships for insurance purposes against a set of detailed technical rules for hull and machinery. International conventions also require ships to meet the hull and machinery standards of a classification society. The UK currently recognises seven classification societies in accordance with EU Directive 2009/15/EU.

Certifying Authorities (CAs) issue survey certificates. The term “appropriate CA” in the Merchant Shipping (Survey and Certification) Regulations 1995 (the 1995 Regulations) has different meanings dependent on the type of ship being referred to. For example, the appropriate CA in relation to passenger ships is the SoS; in relation to cargo ships (except for surveys to radio stations and safety equipment) the appropriate CA refers to the SoS, or any body authorised by the SoS.

The CAs comprise those ROs listed in regulation 1(2)(b) of the 1995 Regulations. Two other ROs have been recognised since the 1995 Regulations came into force; Registro Italiano Navale (RINa) and Nippon Kaiji Kyokai (Class NK). There are survey agreements between the SoS and each of the ROs, including the two newly recognised, authorising them to undertake survey work and issue relevant certificates.

In addition, there are other CAs, such as MECAL⁴, who carry out survey and certification on ships not covered by the 1995 Regulations. This is generally where simpler standards apply, for example on small work boats in domestic waters. It is considered that these other CAs could also be appointed to undertake survey and certification work for some of the smaller domestic passenger ships covered by the 1995 Regulations.

6. Where exemption powers are currently used

The main three areas in the current legislation where the exemption powers of the SoS are used are:

6.1 Passenger ships

Surveys of passenger ships are currently required to be undertaken by the MCA. The heightened risk to life due to the numbers and nature of the persons onboard and high profile accidents, notably Herald of Free Enterprise, Estonia and Marchioness, have pointed to the need for direct scrutiny by MCA surveyors to provide additional assurance that high standards are maintained. However, the MCA is not obliged to do all the survey work and the 1995 Regulations allow for part of the survey work to be done by a surveyor appointed by an RO. Currently the survey of hull and machinery, but not safety items, on larger passenger ships⁵ is delegated through the agreements mentioned above in 1.2.

Where the ship is a roll-on, roll-off (ro-ro) passenger ship (typically a ferry) the surveys, in their entirety, are required to be done by an MCA surveyor although in practice ROs have been authorised to survey the hull and machinery of these ships based on the SoS's exemption powers contained in the regulations.

Any policy decisions on further delegation of surveys on passenger ships would be subject to consultation with all stakeholders and consideration of changed risks.

6.2 Alternative compliance scheme

The Alternative Compliance Scheme (ACS) applies only to cargo ships. It is a scheme whereby the SoS has used their exemption powers to delegate survey and certification work to ROs which would otherwise have to be carried out by MCA surveyors or surveyors appointed by the SoS at each survey. It streamlines the survey and certification process for cargo ship operators, by having a single point of contact for survey issues. There are stringent criteria,

⁴ MECAL is an international consultancy and certifying authority specialising in the survey and certification of small commercial vessels.

⁵ Typically those on international voyages which are 'classed' by one of the Classification Societies rather than smaller vessels operating in rivers and sheltered waters which are generally not 'classed'.

such as a clean inspection record, for a ship to meet before being accepted and considered for ACS so as to safeguard standards. Ships not meeting the criteria are subject to closer supervision by the MCA.

ACS for cargo ships has been operating successfully for several years based on Ministerial approval – as a trial between 2003 and 2010 and as a permanent feature since. All statutory certificates are issued by the RO with a few exceptions, notably those required under the International Safety Management Code (ISM Code)⁶ relating to ships and the companies that operate them. The International Ship Security Certificate (ISSC)⁷ remains the responsibility of the MCA – its survey requirements are covered by another Regulation. The arrangement allows MCA surveyors to retain supervision of the management of the ship, onboard and ashore, through ISM audits and general inspections, whilst delegating all hardware surveys, for example the Cargo Ship Safety Equipment Survey to the ROs. This supervision is seen by the MCA as key to the SoS meeting their responsibilities towards the UK fleet.

6.3 Safety equipment certificates on cargo ships

For those cargo ships not under the ACS surveys, the issue of the Safety Equipment Certificate (SEC) has to be done by an MCA surveyor or one individually appointed by the SoS. The SEC covers safety items such as navigational equipment (e.g. charts, radars, echo sounders), lifesaving appliances (e.g. lifeboats, lifejackets) and fire fighting equipment (e.g. extinguishers, alarms). Where the cargo ship is in a UK port or UK waters, the regulations require the survey to be undertaken exclusively by an MCA surveyor, although in some cases the exemption powers are relied upon to delegate such surveys. Where the ship is not in a UK port or in UK waters, the survey can be carried out by an MCA surveyor or an individual surveyor appointed by the Secretary of State. As the MCA is unable to provide the necessary global coverage so a Class surveyor is appointed to undertake much of this safety equipment work. Individual IOAs (Instrument of Appointment) are issued to specified Class surveyors

7. Policy objectives

The main legislative and policy objective is to provide flexibility in the existing legislation to give the MCA an instrument to change policy in the future and to regularise the existing arrangements, which are based on Ministerial approval and currently rely on exemption powers in the 1995 Regulations.

The MCA is trying to be pro-active in changing the legislation in advance. Following the publication of the Survey and Inspection review, changes to policy in one way or another, are almost inevitable. The MCA would like to be in a position where it would be able to have the legislation in place prior to a possible policy change. This would enable the MCA to be as flexible as possible in its approach with industry who are expecting us to respond to any changes as swiftly as possible.

Full delegation is not the current MCA policy, nor its intention, but the proposed changes to legislation give the potential for full delegation if it becomes policy. If the MCA was to change current practise and policy objective, this would be subject to further consultation with stakeholders and industry and an IA.

⁶ The ISM Code, introduced in the 1990s, provides an international standard for safe management and operation of ships. The catalyst for this code was the Herald of Free Enterprise disaster which highlighted failures in operations rather than solely hardware failures.

⁷ The International Ship and Port Facility Security Code is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ship and port facilities in the wake of 9/11 attacks in the United States.

The MCA is currently undergoing its own internal review on its Survey and Inspection operations, in line with the Government's Civil Service Reform Plan. These plans are detailed in the MCA's Business Plan⁸. The future MCA policy of delegation will very much depend on the outcome of the Survey and Inspection review, the results of which will be made known in 2014. However, given the current Government policy of deregulation and delegation, we are anticipating this may become a future change in policy. As a minimum, amending the Regulations would remove the current legal restrictions for the Secretary of State to make delegations.

8. Policy options considered:

Option 0: Do Nothing

In this scenario the MCA would continue to rely upon the SoS's exemption powers in the 1995 regulation and would not have the legislative vehicle to delegate work if this became future MCA policy. All other options have been considered against the do nothing option.

Following the outcome of the Survey and Inspection review, should the MCA policy change this could leave the MCA without full powers to be able to follow Government policy of deregulation and delegation. Therefore the MCA would have to continue relying on exemption powers in the 1995 Regulations. This would not achieve the policy objectives and is not the preferred option.

Option 1: Amendment to existing legislation to allow Full Delegation.

This option would amend legislation to allow in the future (and if MCA policy on delegation were to change) for the full delegation of the Survey and Certification of cargo vessels and passenger ships.

The preferred option is Option 1; Full Delegation because this would achieve our objective to provide flexibility in the existing legislation that allows the MCA an instrument to change policy in the future and to regularise the existing arrangements. Any policy decisions on full delegation would be subject to consideration of changed risks consultation with all stakeholders and also an IA. A decision regarding the future direction of the MCA policy on delegation will be made following the publication of the outcome of the Survey and Inspection review, which as stated above is expected in mid 2015.

9. Monetised and non-monetised costs and benefits of each policy option. (Including administrative burden).

Quantifying the cost and benefits is not possible because the option considered only change legislation. It would not change current MCA practice. There will be no new costs or benefits to any parties (e.g. business or the MCA) from amending the current legislation. For instance businesses would still be surveyed by the MCA at the same hourly rate as currently charged.

Full delegation is not the current MCA policy, nor its intention, but the proposed changes give the potential for full or partial delegation in the future if it becomes policy. If in the future MCA policy changed there would be another impact assessment that would assess the impacts of delegation that would be consulted upon.

10. Rationale and evidence that justify the level of analysis used in the IA. (Proportionality approach.)

⁸ http://www.dft.gov.uk/mca/maritime_and_coastguard_agency_business_plan_2013-14.pdf

A light-touch approach to this assessment has been considered proportionate because it changes legislation to grant the SoS the ability to deregulate services in the future where deemed appropriate. It will only change legislation and will not change the Maritime and Coastguard Agency's (MCA) practice. If in the future the SoS decided to exercise this authority it would be necessary to conduct a more in-depth analysis and have another consultation. The analytical assurance for this impact assessment is therefore considered medium.

11. Risks and assumptions

Because the policy only amends legislation to provide the necessary legislative vehicle to allow future delegation (if this became policy) there are no risks or assumptions that impact upon this IA.

12. Direct costs and benefits to business calculations (following OITO methodology)

This proposal is out of scope of One In, Two Out. It does not have an impact on business or civil society organisations. It only amends inflexible legislation with no financial impact.

13. Wider impacts

13.1 Small and microbusiness assessment

As competition already exists between the ROs, it is assumed that there will be no changes to this from amending legislation. However, in the future if there is further delegation, following consultation, the impact will be re-assessed.

13.2 Equality assessment

There is no effect, positive or negative, on outcomes for persons in relation to their age, disability, gender assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

14. Summary of preferred option with description of the implementation plan.

14.1 Summary of preferred option:

The preferred option is Option 1; Amendment to existing legislation to allow Full Delegation. Any policy decisions on full delegation would be subject to consultation with all stakeholders and also consideration of changed risks.

14.2 Description of the Implementation Plan:

This measure is within SNR7 with a commitment to completion by April 2015

15. Enforcement, sanctions and monitoring

Enforcement of contravention of the Regulations will be carried out by the MCA as part of its existing enforcement activities. The penalties for non compliance contained in the Regulations, including a fine not exceeding the statutory maximum or imprisonment not exceeding a specified period are consistent with penalties under the status quo. The existing penalties are

being transferred into these new regulations as they stand. To date, no prosecutions related to these Regulations have been brought.